IN THE

Supreme Court of the United States

OCTOBER TERM, 1943.

No. .....

JAMES O. HARTMAN, *Petitioner*,

v.

WILLIE ROSS, *Respondent*.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

The opinion of the United States Court of Appeals for the District of Columbia will be found beginning at page ... of the record herein. It has not as yet been officially reported.

Jurisdiction.

The decision of the United States Court of Appeals for the District of Columbia was rendered on November 22, 1943. The jurisdiction of this Court is based on Section 240(a) of the Judicial Code as amended by the Act of February 13, 1935, 43 Stat. 936, 28 U. S. C., Sec. 347(a).

Question Presented.

The question presented is stated in the petition (*supra*, p. 2).

Specification of Errors.

(1) The decision of the Court of Appeals is predicated on a false premise. That court asserts as a basic principle of universal applicability the proposition that where a statute or ordinance designed to prevent a particular hazard is breached and injury subsequently arises, the proximate cause of such injury is necessarily the breach of the statute or ordinance irrespective of any independent, intervening responsible agency. In its broad, all embracing implications, this proposition is clearly erroneous.

(2) Contrary to every prior decision involving essentially the same facts, and reversing a decision of its own which had stood since 1916, the Court of Appeals erroneously held that petitioner's act was the proximate cause of respondent's injury.

(3) The Court of Appeals erred when it ruled *as a matter of law* that petitioner's act was the proximate cause of the injury to the respondent herein. At most this is a question of fact for the jury.

ARGUMENT.

(1) The Court Established an Erroneous Doctrine of Legal Causation.

The Court of Appeals asserted that the violation of a city ordinance designed to prevent a particular hazard is the proximate cause of subsequent injury irrespective of any independent, intervening responsible agency.

The effect of this doctrine is far reaching and unique in the law of torts. It destroys the fundamental concepts of "condition", "remote" and "proximate cause". This is best illustrated factually by a consideration of the effect of the decision. It is not only the logical but also intended result of the decision that if a person should leave his automobile unlocked on the street, where it is stolen, the unfortunate owner would be forever legally responsible for the

negligent operation by the thief regardless of the intervention of time or distance, be it years later and a thousand miles away. In fact, the reasoning of the court would not justify a limitation of the owner's liability to the negligence of the thief but would extend it to the negligent operation of any persons coming into possession through the thief. The consequences of such a holding are indeed unique.

Petitioner does not question but what a statute or regulation may prescribe a standard of conduct definitive of due care as a substitute for the "reasonably prudent man." However, Petitioner's act, though a violation of the regulation and therefore negligent, cannot subject him to liability if recognition is given the established concepts of legal causation.

This Court in *Southern Ry. Co.* v. *Walters*, 284 U. S. 190, held that the defendant railway was not responsible for injuries suffered by a boy who ran into the side of a train which, in violation of a safety ordinance, had not stopped before crossing the street at the scene of the accident. This court exonerated the Railway Company, saying that the failure to stop before entering the crossing in violation of the ordinance was not the proximate cause of plaintiff's injury. Thus a remote cause or condition, even arising from the violation of an ordinance, will not create liability for injuries although such injuries would not have occurred but for the remote cause or condition.

Such is the basis of every decision which has been found involving essentially the same facts as exist in the instant case. It was the basis of *Squires* v. *Brooks*, 44 App. D. C. 320, decided by the Court of Appeals in 1916. So too in *Caskey* v. *Katz & Besthoff, Ltd.*, 148 So. 76 (La. 1933); and *Slater* v. *T. C. Baker Co.*, 261 Mass. 424, 158 N. E. 778 (1927), reconsidered and distinguished in *Malloy* v. *Newman*, 310 Mass. 269, 37 N. E. (2d) 1001.

The effect of an intervening cause upon the responsibility of one violating a statute is well illustrated in *Horan* v. *Watertown*, 217 Mass., 185, 104 N. E. 464. The defendant in

violation of a state statute stored dynamite in an unlocked and unguarded tool chest within the limits of a highway. Small boys removed the dynamite and threw it upon a fire to the injury of the plaintiff. Applying the long recognized doctrine of caustion, the breach of the statute was held to be merely a "condition" upon which the intervening cause could operate.

Again it was held that the violation of a statute intended to minimize fire hazards by prohibiting the storage of oil upon a railway station platform was not the proximate cause of the fire which resulted when the oil was ignited by a third person. *Stone* v. *The Boston & A. Ry. Co.*, 171 Mass., 536, 51 N. E. 1.

By spelling both negligence and causality out of the breach of an ordinance, the Court of Appeals not only renders itself irreconcilably opposed to numerous cases involving the doctrine of last clear chance, but the application of the principle now announced by the court will necessarily emasculate that so-called humanitarian doctrine where the plaintiff's negligence arises, as frequently it does, from a violation of an ordinance or statute. Thus in *Arnold* v. *Owens*, 78 F(2d), 495, the plaintiff, a pedestrian, violated a statute designed for the protection of such persons by requiring them to walk on the side of the highway facing oncoming traffic. Plaintiff was struck from behind and severely injured. Applying last clear chance, plaintiff was permitted to recover, it being held that the violation of the statute by plaintiff was not a proximate cause of his injury, despite the fact that the statute was intended to prevent accidents of the very nature which occurred. This illustration can be multiplied without end, but the results reached in such cases cannot be attained under the doctrine now applied by the Court of Appeals, for if plaintiff's peril arises from a violation by him of a statute or ordinance designed for his protection, such violation would not only constitute negligence but proximate cause as well.

(2) The Court Ignored Every Prior Decision on the Same Question.

As previously indicated, the precise question in this case has been adjudicated three times to the knowledge of counsel. In each, the courts, though asserting or assuming that the act in leaving the car unlocked constituted negligence, nevertheless held that such negligence was not the proximate cause of its subsequent negligent operation by a thief. *Squires* v. *Brooks*, 44 App. D. C. 320; *Slater* v. *T. C. Baker Co.*, 261 Mass., 424, 158 N. E. 778; and *Castay* v. *Katz & Besthoff, Ltd.*, 148 So. 76 (La. 1933), all *supra*.

(3) At Most the Question of Proximate Cause is a Factual One for Determination by the Jury.

The Court of Appeals has swung from *Squires* v. *Brooks*, *supra*, holding the facts in question to be insufficient evidence of proximate cause as a matter of law, to the other extreme that such facts constitute proximate cause as a matter of law. At most, this is a factual question which the petitioner is entitled to submit to the jury. *The Milwaukee and St. Paul Ry. Co.* v. *Kellogg*, 94 U. S. 256.

CONCLUSION.

For the foregoing reasons it is respectfully submitted that the Petition for a Writ of *Certiorari* is within the provisions of Rule 38 of this Court; that the problems presented have widespread importance in which this Court should exercise its power of review to settle the legal questions involved. It is therefore respectfully urged that a writ of *certiorari* should be granted.

FRANK J. HOGAN,
EDMUND L. JONES,
Counsel for Petitioner.

HOWARD BOYD,
Of Counsel.